Written Submission from H.P. Trotter

The following comments are based on the assumption that Scotland remains within the European Union (EU) and as such Scottish Agriculture (SA) will need to compete within that market environment. The Land Reform Bill does not explicitly appear to prioritise the development of SA but does look to introduce new challenges for the sector which is a concern. It is interesting to note that even "prior to (EU) accession, British farmers believed that producer prices would increase as a result of CAP and, given the relatively efficient structure of British agriculture, they would be well placed to compete" noted Andrew Fearne in Chapter 3 The Common Agricultural Policy and the World Economy, (1991), edited by Professors C Ritson & D Harvey; Department of Agricultural Economics and Food Marketing, The University of Newcastle-upon-Tyne (C.A.B.I., Oxon). The efficiencies of British agriculture should not be given up lightly or without rigorous cost benefit analysis of the alternative policy objectives.

I strongly suggest for the long-term benefit of Scotland, its economy and sustainability of SA, it needs to be as competitive as possible. Recent economic debate has seen economic commentators focus on the UK's productivity gap with its EU competitors. Scottish agriculture already faces challenges of climate and geography: It would be highly regrettable if Scottish Land Reform and agricultural holdings legislation further exposed the Scottish agricultural industry to yet more structural economic disadvantages as compared to the industry south of the border in England and the rest of the EU. Likewise it would also be lamentable if rural policy further contributed to the UK's productivity gap.

It would be laudable to demonstrate clear cost benefit analysis (CBA) on the policies that the Land Reform Bill will introduce.

The geography and landscape of Scotland is a result of man’s activity. The Scotland that existed prior to man’s involvement was created in very different climatic conditions than exist today, thus it would be spurious for anyone to assume that if land is abandoned it will return to some pre-man “natural state”. There are areas of Scotland where modern agriculture will struggle or fail to be competitive. In these locations where land management practices are required for public goods, such as the good of the environment, then government should avoid artificially incentivising production; but should pay farmers and landowners to undertake the necessary management activities to protect the environment and landscape. I suggest where possible that the most effective and economic delivery of these public goods can be achieved by using farmers and landowners as the delivery mechanism for these public goods in preference to the public sector.

Rural Scotland has a wide diversity of productivity capabilities and as such there are larger holdings with relatively few owners in the less productive north and west. In the south and east the holding pattern is more reflective of the rest of the UK. It would be healthy if public servants endeavoured to explain this and avoided using it as justification. NB Scotland has less holdings of over 100 hectares than England; respectively 5,604 vs 8,985 Source: June Surveys of Data, SAF land data (2012). Equivalent data from the same source for holding sizes are remarkably comparable especially considering the extent of Scotland's relatively unproductive uplands: Scotland at 106 vs England’s average at 86 hectares. Notably both below the scale agricultural advisors would recommend for most types of agricultural; suggesting a need for consolidation in both Scotland and England. Against this economic backdrop any radical change in the landownership pattern in Scotland that leads to more fragmentation will need clearly justified and paid for.

- 91 Act tenancies
Like other industries, Scottish Agriculture (SA) is exposed to economic pressures and likewise should look to develop exploiting efficiencies from scales of economy and synergies via mergers and acquisitions. 1991 Tenancies are a barrier to mergers and acquisitions and the normal market development of SA. The 1991 Tenancy and its security of tenure were initially developed after World War 2 to overcome the scarcity of capital for investment. In England the Agricultural Holdings Act 1986 (AHA) tenancies are the successors of tenancies developed at the same time and for the same reasons as Scotland’s 1991 tenancies. AHA tenancies are the correct comparable for the Scottish 1991 tenancy; not crofting tenure. AHA tenancies give security of tenure for 3 generations; unlike the 1991 tenancy which has no such limit. AHA tenancies share many of the structural challenges of the 1991 tenancies however in the coming years they will be slowly washed-out of the system and other successful letting models used such as the FBT. Scotland does not have an equivalent solution.

- **Assignation and Conversion of 1991 Act Tenancies into Modern Limited Duration Tenancies**

There are many successful farm tenants with 1991 tenancies which will no doubt continue as successful market participants but there are other 1991 tenancies that are not big enough for the scale required in modern agriculture or where the tenant may not have the capital, skills or experience to successfully optimise the use of the land within their 1991 tenancies. Unlike a small owner occupier who in similar situations decide to sell or let out the property; in the worst cases tenants are caught in a trap where they may feel they can not give up the perceived advantage of below market rents. These tenants are at risk of poverty and/or forced to take up second jobs that may remove their ability to optimise the use of their holding. These 1991 tenancies need a mechanism to allow tenants to exit the industry. Assignation for value and conversion to a Modern Limited Duration Tenancy (MDLT) may be a positive solution for many. 35 years is beyond a normal generation, which might tie the next generation’s hands therefore I suggest the duration of a 1991 tenancy transferring to a MDLT should be in line with the traditional understanding of a generation i.e. 20 years. It would also be remarkably positive to align the outgoing tenant and the landlord’s interests which might be achieved if the landlord could share in the value of an achieved at assignation.

- **Succession Rights for Tenants**

I strongly suggest that widening the possible successors of 1991 tenancies should be limited to those who can evidence they are already dependent for their livelihood on the holding tenancy they wish to succeed to and have the necessary skills to make a success of the tenancy.

Widening possible successors to those with no economic connection with the holding will needlessly perpetuate the 1991 tenancies, which are not fit for purpose for SA today, as evidenced by the controversy that surrounds them and fact that the new letting models in the Land Reform Bill are not comparable to the 1991 tenancy nor has the 1991 tenancy been adopted as a model elsewhere.

- **Right to Buy for Tenants Where Landlord in Persistent Breach**

Tenants’ Right to Buy where a Landlord is in Persistent Breach needs clawback protection broadened to compensate the landlord if there is land use change in the following years with dramatic change in economic outcomes e.g. development of hydro power schemes as well as the important proposed safeguard if the land is resold. If the land is re-sold the previous
landowner should also be given the first refusal on purchasing the land they formally owned; albeit with a sitting tenant.

If a 1991 tenancy farm, is a landowner’s only property and/or their home, then I suggest the Tenants’ Right to Buy where Landlord is in Persistent Breach the 1991 Tenancy should be exempt from such a holding, even where the Landlord is in Persistent Breach regulations.

- New Modern Limited Duration Tenancies

Having recently renewed a commercial lease with a new partner with a proposed duration of twenty years, it became apparent in negotiations that a 5 year each way break was a good option for both parties to be sure and to gain comfort the relationship is going to work. Unless otherwise agreed in a MLDT I suggest an each way 5 year break should be included in all New MLDTs, not just those with New Entrants.

- The Sustainable Right To Buy

The definition of a ‘Community’ needs to safeguard against communities being hijacked by a small subset of activists, driving their own agenda, when the majority of wider geographic of community is not in favour or simply ambivalent to the activists vision.

Land in community ownership needs to have a clear method to return to the private sector. While community ownership works well where resources are available e.g. for well-funded communally operated gardens/gated community grounds often encountered in cities. The model of community ownership is less successful when there is financial distress. If a community ownership enterprise struggles through lack of funds or the driving members of the community leaving the community, then for the good of the land it may on occasion be better for such properties to return to clear unambiguous accountability and responsibilities attached to private ownership rights.

The sustainable right to buy needs to safeguard against communities cherry picking land, using the grounds of a landowner being a barrier to sustainable development, when the land concerned forms part of wider landholding and contributes to the operation of another wider entity e.g. amenity ground around a hotel.

- Engaging With Communities

Planning legislation, as is, should remain the governing legislation for changes in land use activity. Responsibility to engage with communities needs to be proportionate to the activities being undertaken. Limitations need to be in place to stop ‘engaging with communities’ becoming an unproductive discourse where there is an unresolvable difference of opinion. The process needs to be proportionate and not to become an economic burden that is unnecessarily disruptive to business; this may depend on the scale of the business involved. Again there is need for a cost benefit analysis and justification.

I suggest in rural communities of Scotland any challenges identifying who is responsible for privately owned land are very much the exception rather than the norm.

- End To Non-Domestic Rates Exemptions For Shootings & Deer Forests

“Removal of the exemption from business rates for sporting estates and government minister intervention to enforce the sale of land have met with some concern” (Agribusiness News, July 2015 by SAC Consulting). Sporting is very often a marginal business that may form part of a wider land based enterprise. The sporting employment support marginal jobs and
contributes to Full Time Equivalent Jobs in fragile already rural economies. The economic and social merits of exposing these sorts of businesses to Non-domestic Rates are very unclear. As such it should be justified both (1) on a policy level and (2) with cost benefit analysis. It is notable and remarkable that in the Scottish borders, the sporting industry will be punished, having to compete for business with a higher cost base and thus a structural economic disadvantage to providers a few minutes’ drive across the border; and all as a potential result of proposed Scottish Government policy.

- Scottish Land Commission

It was surprising that the Land Reform Review Group with its wide ranging remit did not look to have a member with commercial experience of the commercial house building industry as they have direct experience of how communities choose and pay to live when they buy new homes on modern developments. It was also surprising that there was such limited representation of private sector land managers; when these are the people that steward the Scottish landscape that is celebrated at home and abroad. It would be regrettable if the Scottish Land Commission did not have members with direct experience of the issues of rural private sector land management and ownership.

Yours sincerely,

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